

Clearinghouse Rule 03-022
State of Wisconsin
Department of Workforce Development
Chapter DWD 40
CHILD SUPPORT GUIDELINES

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 40.02(4), 40.02(20), 40.02(25), 40.02(28), 40.02(30), and 40.05; to renumber ss. DWD 40.02(5), 40.02(6), 40.02(7), 40.02(8), 40.02(10), 40.02(16), 40.02(18), 40.02(19), 40.02(22), 40.02(23), 40.02(24), 40.02(31), 40.03(4), 40.03(6), and 40.03(7); to renumber and amend ss. DWD 40.02(9), 40.02(14), 40.02(17), 40.02(26), and 40.02(27); to amend ss. DWD 40.02(2), 40.02(15), 40.04(1)(b)1., 40.04(1)(b)3.a., 40.04(1)(b)3.b., 40.04(1)(b)4., 40.04(1)(b)5.a., 40.04(1)(b)5.b., 40.04(1)(b)6., 40.04(1)(b)8., (40.04(1)(note), and DWD 40 Appendix A (column headings); to repeal and recreate ss. DWD 40.02(3), 40.02(13), 40.02(21), 40.02(29), 40.03(1)(intro), 40.03(2), 40.03(3), 40.03(5), 40.04(2), 40.04(3), 40.04(3)(note), and Appendix B; and to create ss. DWD 40.01(3), 40.02(10), 40.02(14), 40.02(19), 40.02(26), 40.03(4), 40.03(6), 40.03(7), 40.03(9), 40.03(10), 40.04(4), 40.04(5), and Appendix C, relating to the child support guidelines.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.22 (9) and 227.11, Stats.

Statutes interpreted: Sections 49.22 and 767.25, Stats.

Section 49.22 (9), Stats., requires the department to adopt standards for courts to use in determining a child support obligation under s. 767.25, Stats. Chapter DWD 40 establishes these standards based on a percentage of income of either or both parents. Chapter DWD 40 also contains special provisions that a court may use in determining the child support obligations for a serial payer, a split-custody payer, and shared-placement parents. The percentage standards and special circumstance provisions are based on the principle that a child's standard of living should not be adversely affected because his or her parents are not living together.

In spring 2001, with input from members of the legislature, the DWD Secretary appointed an advisory committee to provide guidance to the department on revisions to chapter DWD 40. The advisory committee included members of the courts, state bar, community-based organizations, county child support agencies, citizens, and the department. The committee recommended changes to the provision affecting shared-placement parents and new special provisions for low-income payers and high-income payers.

Shared-placement parents. The concept behind the special provision for shared-placement parents is that the shared-placement order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. The current threshold for application of the shared-placement provision is placement of at least 30%. If a parent's placement falls between 30% and 40%, that parent pays the other parent a child support amount that is less than the full percentage standards but there is no determination or offset of any obligation of the other parent. If the period of placement with the parent with less time is above 40%, the current rule reduces the child support obligation of the parent with less time and requires the determination and offset of the obligation of the parent with more time. Because the current formula does not proportionately reduce the paying parent's share of support at the same rate as the increase in placement, it creates a cliff effect that encourages litigation between the parties.

The proposed shared-placement provision is based on the premise that when both parents have significant periods of placement the formula should take into account the duplicated costs of child rearing in both households and both parents' incomes as a more realistic and equitable basis to set child support. The court may apply the proposed formula when both parents have a court-ordered period of placement of at least 25%

overnights or the equivalent and each parent is ordered to assume the child's basic support costs in proportion to the time that the parent has placement of the child. Basic support costs are defined as food, shelter, clothing, transportation, personal care, and incidental recreational costs.

The first step in calculating the child support obligations of shared-placement parents is determining each parent's obligation under the percentage standards. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time, the court shall consider the benefit to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more. The next steps are multiplying the obligation under the percentage standards for each parent by 150% to account for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items; multiplying that amount for each parent by the proportion of time that the child spends with the other parent; and offsetting resulting amounts against each other. The court shall also assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment to be either between the parents or from a parent to a third-party service provider and not to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order. Variable costs are reasonable costs above basic support costs, including child care, tuition, a child's special needs, and other activities that involve substantial cost.

Low-income payers. The proposed special provision for low-income payers is based on the premise that many low-income payers have insufficient income to pay current ordered amounts. Lower support levels for low-income payers may enable them to pay current support and accrue fewer arrears. Lower support levels may also increase their emotional and financial investment in their children.

The proposed rule provides a schedule with reduced percentage rates to be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines if the court determines that the payer's total economic circumstances limit his or her ability to pay support at the level determined using the full percentage rates. If a payer's monthly income is below the lowest income level in Appendix C, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C. For income between approximately 75% and 125% of the federal poverty guidelines, the percentage rates gradually increase as income increases. The full percentages rates apply to payers with income greater than or equal to the levels listed in the schedule.

High-income payers. The proposed special provision for high-income payers is based on the premise that above certain income levels, parents share a smaller percentage of their income with their children. The payer's full monthly income is considered in determining the child support obligation. The standard percentages of 17% for 1 child, 25% for 2 children, 29% for 3 children, 31% for 4 children, and 34% for 5 or more children apply to a payer's income less than \$84,000 per year. The court may apply approximately 80% of the full percentage standards to the portion of a payer's annual income that is greater than or equal to \$84,000 and less than or equal to \$150,000. These percentages are 14% for 1 child, 20% for 2 children, 23% for 3 children, 25% for 4 children, and 27% for 5 or more children. The court may apply approximately 60% of the full percentage standards to the portion of the payer's annual income that is above \$150,000. These percentages are 10% for 1 child, 15% for 2 children, 17% for 3 children, 19% for 4 children, 20% for 5 or more children.

Miscellaneous. The department proposes the following additional changes:

- **Income imputed based on earning capacity.** In determining a parent's ability to earn, the court shall consider a parent's earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary placement education, training and current work experience, and availability of work in or near the parent's community. A requirement is added that evidence must be presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable before the court may impute income at 35 times the federal minimum hourly wage.

- Income imputed from assets. The proposed rule allows income to be imputed from assets if a parent's assets are underproductive *and* at least one of the following applies: the parent has diverted income into assets to avoid paying child support or income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents. The current rule allows income to be imputed from assets if they are underproductive, *or* the parent has diverted income into assets to avoid paying child support, *or* income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.
- Shared-placement order with serial families. The concept behind the special provision for shared-placement parents is that the order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. A shared-placement parent with one child is spending approximately 17% of his or her income on the child even though the child support order may be substantially less than that amount if the parents' placement periods and incomes are similar. The concept behind the special provision for serial families is to give credit for the amount spent on the first family before determining the order for children in the next family. The current serial family provision only gives credit for the amount of the order and does not consider the special situation of shared-placement parents with serial families. The proposed provision on shared-placement orders in serial families gives credit for the full percentage standard.
- Child's Social Security insurance. The court may include social security benefits received by a child based on a parent's entitlement to federal disability or old-age insurance in the parent's gross income and adjust the parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.
- Maintenance. If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation before the maintenance obligation.
- Effect of rule change. A modification of any provision of chapter DWD 40 shall not be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.
- Undistributed income of a closely held corporation. Further detail is proposed to clarify when to include undistributed corporate income in gross income. The rule currently provides that undistributed income is included if the payer has ownership interest sufficient to individually exercise control or access the business earnings. The proposed rule defines undistributed income as federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation using the straight line method. The court may adjust gross income to include undistributed income not determined reasonably necessary for the growth of the business.
- Terminology.
 - q "Monthly income available for child support" is the proposed term to refer to the monthly income at which the child support obligation is determined. It includes gross income, or if applicable, income modified for business expenses; income imputed based on earning capacity; and income imputed from assets. "Monthly income available for child support" is similar to the current term "base," except "base" does not include income imputed based on earning capacity. A support obligation based on earning capacity is a separate calculation under the current rule.
 - q The proposed rule uses the term "split-placement" in place of "split-custody," which is incorrectly used in the current rule.
 - q The split-placement subsection is rewritten because the current rule refers to the payer and payee at the beginning of the calculation before it can be accurately known who will be the payer or payee.

SECTION 1. DWD 40.01 (3) is created to read:

DWD 40.01 (3) EFFECT OF RULE CHANGE. A modification of any provision in this chapter shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.

SECTION 2. DWD 40.02 (2) is amended to read:

DWD 40.02 (2) “Adjusted ~~base~~ monthly income available for child support” means the monthly income at which the child support obligation is determined for serial family payers, which is the payer’s ~~base monthly income available for child support~~ less the amount of any existing legal obligation for child support.

SECTION 3. DWD 40.02 (3) is repealed and recreated to read:

DWD 40.02 (3) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

SECTION 4. DWD 40.02 (4) is repealed.

SECTION 5. DWD 40.02 (5), (6), (7), (8), (9), and (10) are renumbered DWD 40.02 (4), (5), (6), (7), (8), and (9) and, as renumbered, DWD 40.02 (8) is amended to read:

DWD 40.02 (8) “Department” means the Wisconsin department of ~~health and social services~~ workforce development.

SECTION 6. DWD 40.02 (10) is created to read:

DWD 40.02 (10) “Equivalent care” means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

SECTION 7. DWD 40.02 (13) is repealed and recreated to read:

DWD 40.02 (13) “Gross income.” (a) “Gross income” means all of the following:

1. Salary and wages.
2. Interest and investment income.
3. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.
4. Net proceeds resulting from worker’s compensation or other personal injury awards intended to replace income.
5. Unemployment insurance.
6. Income continuation benefits.
7. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.
8. Military allowances and veterans benefits.

9. Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under s. DWD 40.03 (4). In this paragraph:

a. “Undistributed income” means federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity’s federal income tax return less a reasonable allowance for economic depreciation.

b. A “reasonable allowance for economic depreciation” means the amount of depreciation on assets computed using the straight line method and useful lives as determined under federal income tax laws and regulations.

Note: Income considered under this subsection is subject to the adjustments under s. DWD 40.03 (2).

10. All other income, whether taxable or not, except that gross income does not include any of the following:

- a. Child support.
- b. Foster care payments under s. 48.62, Stats.
- c. Kinship care payments under s. 48.57 (3m) or (3n), Stats.
- d. Public assistance benefits under ch. 49, Stats., except that child care subsidy payments under s. 49.155, Stats., shall be considered income to a child care provider.
- e. Food stamps under 7 USC 2011 to 2036.
- f. Cash benefits paid by counties under s. 59.53 (21), Stats.
- g. Supplemental Security Income under 42 USC 1381 to 1383f and state supplemental payments under s. 49.77, Stats.
- h. Payments made for social services or any other public assistance benefits.

(b) This subsection defines gross income used in establishing a child support order under this chapter and may not be used to limit income withholding under s. 767.265, Stats., or the assignment of worker’s compensation benefits for child support under s. 102.27 (2), Stats.

Note: This paragraph clarifies that although the portion of worker’s compensation awards not intended to replace income is excluded from gross income in *establishing* a child support order, the full worker’s compensation benefit is assignable for the *collection* of child support.

SECTION 8. DWD 40.02 (20) is repealed.

SECTION 9. DWD 40.02 (14), (16), (17), and (18) are renumbered DWD 40.02 (16), (17), (18) , and (20) and, as renumbered, DWD 40.02 (16) and (18) are amended to read:

DWD 40.02 (16) ~~“Gross income available for child support~~ Income modified for business expenses” means the amount of ~~gross~~ income after adding wages paid to dependent household members, adding undistributed income that the court determines is not reasonably necessary for the growth of the business, and subtracting business expenses ~~which~~ that the court determines are reasonably necessary for the

production of that income or operation of the business and ~~which that~~ may differ from the determination of allowable business expenses for tax purposes.

DWD 40.02 (18) “Legal obligation for child support” has the meaning prescribed for “child support” or “child support obligation” in sub. ~~(6)~~ (5).

SECTION 10. DWD 40.02 (14) is created to read:

DWD 40.02 (14) “Income imputed based on earning capacity” means the amount of income that exceeds the parent’s actual income and represents the parent’s ability to earn, based on the parent’s education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent’s community.

SECTION 11. DWD 40.02 (15) is amended to read:

DWD 40.02 (15) “~~Imputed income for child support~~ Income imputed from assets” means the amount of income ascribed to assets ~~which that~~ are unproductive ~~or and~~ to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the ~~economic level~~ standard of living they would ~~enjoy have~~ if they were living with both parents, and ~~which that~~ exceeds the actual ~~earnings of~~ income from the assets.

SECTION 12. DWD 40.02 (25) and (25)(note) are repealed.

SECTION 13. DWD 40.02 (19), (22), (23), and (24) are renumbered DWD 40.02 (22), (23), (24), and (25).

SECTION 14. DWD 40.02 (19) is created to read:

DWD 40.02 (19) “Low-income payer” means a payer for whom the court uses the monthly support amount provided in the schedule in Appendix C based on the court’s determination that the payer’s total economic circumstances limit his or her ability to pay support at the level provided under s. DWD 40.03 (1) and the payer’s income available for child support is at a level set forth in the schedule in Appendix C.

SECTION 15. DWD 40.02 (21) is repealed and recreated to read:

DWD 40.02 (21) “Monthly income available for child support” means the monthly income at which the child support obligation is determined, which is calculated by adding the parent’s annual gross income or, if applicable, the parent’s annual income modified for business expenses; the parent’s annual income imputed based on earning capacity; and the parent’s annual income imputed from assets, and dividing that total by 12.

SECTION 16. DWD 40.02 (28) is repealed.

SECTION 17. DWD 40.02 (26) and (27) are renumbered DWD 40.02 (27) and (28) and, as renumbered, are amended to read:

DWD 40.02 (27) ~~“Split custody~~ Split-placement payer” means a payer who has 2 or more children and who has physical placement of one or more but not all of the children.

DWD 40.02 (28) “Standard” or “percentage standard” means the percentage of income standard under s. DWD 40.03 (1) which, when multiplied by the payer’s base or adjusted base monthly income available for child support or adjusted monthly income available for child support, results in the payer’s child support obligation.

SECTION 18. DWD 40.02 (26) is created to read:

DWD 40.02 (26) “Shared-placement payer” means a parent who has a court-ordered period of placement of at least 25%, is ordered by the court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child, and is determined to owe a greater support amount than the other parent under the calculation in s. DWD 40.04 (2)(b).

SECTION 19. DWD 40.02 (29) is repealed and recreated to read:

DWD 40.02 (29) “Variable costs” means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s special needs, and other activities that involve substantial cost.

SECTION 20. DWD 40.02 (30) is repealed.

SECTION 21. DWD 40.02 (31) is renumbered DWD 40.02 (30).

SECTION 22. DWD 40.03 (1)(intro.) is repealed and recreated to read:

DWD 40.03 (1)(intro.) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The court shall determine a parent’s monthly income available for child support by adding together the parent’s annual gross income or, if applicable, the parent’s annual income modified for business expenses; the parent’s annual income imputed based on earning capacity; and the parent’s annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DWD 40.04 (4) and (5), the percentage of the parent’s monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

SECTION 23. DWD 40.03 (2) and (3) are repealed and recreated to read:

DWD 40.03 (2) DETERMINING INCOME MODIFIED FOR BUSINESS EXPENSES. In determining a parent’s monthly income available for child support under sub. (1), the court may adjust a parent’s gross income as follows:

- (a) Adding wages paid to dependent household members.

(b) Adding undistributed income that meets the criteria in s. DWD 40.02 (13)(a)9. and that the court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.

(c) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

DWD 40.03 (3) DETERMINING INCOME IMPUTED BASED ON EARNING CAPACITY. In situations where the income of a parent is less than the parent's earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

SECTION 24. DWD 40.03 (4), (6), and (7) are renumbered DWD 40.03 (7), (10), and (11).

SECTION 25. DWD 40.03 (4) is created to read:

DWD 40.03 (4) DETERMINING INCOME IMPUTED FROM ASSETS. (a) The court may impute a reasonable earning potential to a parent's assets if the court finds both of the following:

1. The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DWD 40.02 (13).

2. The parent's assets are underproductive and at least one of the following applies:

a. The parent has diverted income into assets to avoid paying child support.

b. Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The court shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable and subtracting the actual income from the assets that was included as gross income under s. DWD 40.02 (13).

SECTION 26. DWD 40.03 (5) is repealed and recreated to read:

DWD 40.03 (5) ADJUSTMENT FOR CHILD'S SOCIAL SECURITY. The court may include benefits received by a child under 42 USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.

SECTION 27. DWD 40.03 (6), (8), and (9) are created to read:

(6) DETERMINE CHILD SUPPORT BEFORE MAINTENANCE. If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation under this chapter before determining the payer's maintenance obligation under s. 767.26, Stats.

(8) EXPRESSION OF ORDERED SUPPORT. The support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2)(am)1. to 3., Stats., are satisfied.

(9) TRUST. The court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.

SECTION 28. DWD 40.04 (1)(b)1., 40.04 (1)(b)3.a., 40.04 (1)(b)3.b., 40.04 (1)(b)4., 40.04 (1)(b)5.a., 40.04 (1)(b)5.b., 40.04 (1)(b)6., 40.04 (1)(b)8., and DWD 40.04(1)(note) are amended to read:

DWD 40.04 (1)(b)1. Determine the payer's base monthly income available for child support under s. DWD 40.03 (1)(intro.);

3.a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. DWD 40.04 (2), the support for that obligation is the monthly amount of that order;

3.b. If the payer is ~~not subject to an existing order for that legal obligation, in an intact family or is subject to a shared-placement order under s. DWD 40.04 (2),~~ the support is determined by multiplying the appropriate percentage under s. DWD 40.03 (1) for that number of children by the payer's base monthly income available for child support;

4. Adjust the base monthly income available for child support by subtracting the support for the first legal obligation under subd. 3. from the payer's base monthly income available for child support under subd. 1;

5.a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. DWD 40.04 (2), the support for that obligation is the monthly amount of that order;

5.b. If the payer is ~~not subject to an existing order for that legal obligation, in an intact family or is subject to a shared-placement order under s. DWD 40.04 (2),~~ the support is determined by multiplying the appropriate percentage under s. DWD 40.03 (1) for that number of children by the payer's base monthly income available for child support;

6. Adjust the ~~base~~ monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5. from the first adjusted ~~base~~ monthly income available for child support determined under subd. 4;

8. Multiply the appropriate percentage under s. DWD 40.03 (1) for the number of children subject to the new order by the final adjusted ~~base~~ monthly income available for child support determined in either subd. 6. or 7. to determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-family payer whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

Parent A's current ~~base~~ monthly income available for child support is \$3000.

Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of \$450 per month.

Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.

Parent A was adjudicated the father in 1998 for a child born in 1995. Child support needs to be established for this child.

Order of parent A's legal obligation for child support.

First legal obligation: one child ~~(1980)~~ (1990) (divorce)

Second legal obligation: 2 children ~~(1991 and 1992)~~ (1996 and 1997) (intact family)

Third legal obligation: one child ~~(1993)~~ (1998) (paternity)

Calculation:

Parent A's current ~~base~~ monthly income available for child support \$3000

The first legal obligation is subject to an existing monthly support order (divorce) \$ 450

Adjust the ~~base~~ monthly income available for child support \$3000
- 450

First adjusted ~~base~~ monthly income available for child support \$2550

Determine support for the second legal obligation (intact family) \$2550

x .25
\$637.50

Adjust the first adjusted ~~base~~ monthly income available for child support \$2550
- 637.50

Second adjusted ~~base~~ monthly income available for child support \$1912.50

Determine support for the third legal obligation (paternity) \$1912.50

x .17
\$ 325.12

SECTION 29. DWD 40.04 (2) is repealed and recreated to read:

DWD 40.04 (2) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SHARED-PLACEMENT PARENTS. (a) The shared-placement formula may be applied when both of the following conditions are met:

1. Both parents have court-ordered periods of placement of at least 25% or 92 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care

ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of par. (a) may be determined as follows:

1. Determine each parent's monthly income available for child support under s. DWD 40.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DWD 40.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

2. Multiply each parent's monthly income available for child support by the appropriate percentage standard under s. DWD 40.03 (1).

3. Multiply each amount determined under subd. 2. by 150%.

Note: The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

4. Multiply the amount determined for each parent under subd. 3. by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared-placement payer. The shared-placement payer shall pay the lesser of the amount determined under this subd. or the amount determined using the appropriate percentage standard under s. DWD 40.03 (1). If the shared-placement payer is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subd. or under sub. (4).

6. In addition to the child support obligation determined under subd. (b)5, the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

Note: The following example shows how to calculate the child support obligations of shared-placement parents.

Number of children: Two

Parent A: \$2,000 monthly income available for child support
Court-ordered placement of the child for 219 days a year or 60%.

Parent B: \$3,000 monthly income available for child support
Court-ordered placement of the child for 146 days a year or 40%.

	<u>Parent A</u>	<u>Parent B</u>
1. Monthly income available for child support	\$2,000	\$3,000

2. Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \1125
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \300	$\$1125 \times 60\% = \675
5. Offset	$\$675 - \$300 = \$375.$	
6. Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third-party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

SECTION 30. DWD 40.04 (3) and DWD 40.04 (3)(note) are repealed and recreated to read:

DWD 40.04 (3) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SPLIT-

PLACEMENT PARENTS. For parents who have 2 or more children and each parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

(a) Determine each parent's monthly income available for child support under s. DWD 40.03 (1).

(b) Multiply each parent's monthly income available for child support by the appropriate percentage under s. DWD 40.03 (1) for the number of children placed with the other parent to determine each parent's child support obligation.

(c) Offset resulting amounts under par. (b) against each other. The parent with a greater child support obligation is the split-placement payer.

Note: The following example shows how to calculate the amount of child support for split-placement parents:

Assumptions:

Parent A and B have 3 children.

Parent A has placement of one child and Parent B has placement of 2 children.

Parent A's monthly income available for child support is \$3,000.

Parent B's monthly income available for child support is \$1,500.

Calculation:

Parent A's child support obligation is $\$3,000 \times 25\% =$ 750

Parent B's child support obligation is $\$1,500 \times 17\% =$ 255

Parent A owes Parent B $750 - 255 =$ \$495

SECTION 31. DWD 40.04 (4) is created to read:

DWD 40.04 (4) DETERMINING THE CHILD SUPPORT OBLIGATION OF A LOW-INCOME

PAYER. (a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with a monthly income available for child support at a level set forth in the schedule if the payer's total economic circumstances limit his or her ability to pay support at the level

determined under s. DWD 40.03 (1). If a payer's monthly income available for child support is below the lowest income level in Appendix C, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C.

(b) The department shall revise the schedule in Appendix C at least once every four years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

Note: The schedule in Appendix C provides reduced percentage rates that may be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines. If a payer's monthly income available for child support is below approximately 75% of the federal poverty guidelines, the court may order an appropriate amount for the payer's total economic circumstances. For monthly income for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in s. DWD 40.03 (1) apply to payers with income greater than or equal to approximately 125% of the federal poverty guidelines.

SECTION 32. DWD 40.04 (5) is created to read:

DWD 40.04 (5) DETERMINING THE CHILD SUPPORT OBLIGATION OF A HIGH-INCOME PAYER. (a) The payer's full monthly income available for child support shall be considered in determining the payer's child support obligation. The court may apply the reduced percentages under pars. (c) and (d) to income at the indicated levels.

(b) The court shall apply the percentages in s. DWD 40.03 (1) to a payer's monthly income available for child support that is less than \$7,000.

Note: A monthly income of \$7,000 is an annual income of \$84,000.

(c) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

1. 14% for one child.
2. 20% for 2 children.
3. 23% for 3 children.
4. 25% for 4 children.
5. 27% for 5 or more children.

Note: A monthly income of \$7,000 is an annual income of \$84,000 and a monthly income of \$12,500 is an annual income of \$150,000. The percentages that apply to income between \$84,000 and \$150,000 are approximately 80% of the full percentage standards.

(d) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than \$12,500:

1. 10% for one child.
2. 15% for 2 children.
3. 17% for 3 children.
4. 19% for 4 children.
5. 20% for 5 or more children.

Note: A monthly income of \$12,500 is an annual income of \$150,000. The standards that apply to income over \$150,000 are approximately 60% of the full percentage standards.

SECTION 33. DWD 40.05 is repealed.

SECTION 34. DWD 40 Appendix A (column headings) are amended to read:

<u>Base Monthly Income Available for Child Support</u>	One Child 0.17	Two Children 0.25	Three Children 0.29	Four Children 0.31	Five or More Children 0.34
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SECTION 35. DWD 40 Appendix B is repealed and recreated to read as attached in Appendix B.

SECTION 36. DWD 40 Appendix C is created to read as attached in Appendix C.

SECTION 37. EFFECTIVE DATE. This rule shall take effect on January 1, 2004, as provided in s. 227.22(2)(intro.), Stats.

Clearinghouse Rule 03-022

Wisconsin Department of Workforce Development
Division of Workforce Solutions
Bureau of Child Support

Check one
~ Temporary
~ Final

Judge

Branch

Chapter DWD 40

APPENDIX B

Child Support Percentage Worksheet

This form may be used to calculate a child support obligation in accordance with Chapter DWD 40, Wisconsin Administrative Code. Use of this form is optional.

Case name	~ Mother	Case number
	~ Father	

SECTION I – Determination of Child Support Using the Percentage Standard

A. Calculation of Gross Income or, If Applicable, Income Modified for Business Expenses

Instructions: Use the total annual income disclosed to the court on the standard financial disclosure form and the most recently filed federal and state tax returns. Business expenses allowed for tax purposes may differ from expenses allowed for the determination of income modified for business expenses.

Gross Income:

1. Enter annual income from all sources. _____
2. Enter the amount of public assistance received. _____
3. Enter the amount of child support received. _____
4. Add lines 2 and 3. _____
5. Subtract line 4 from line 1. This is the parent's **gross income**. _____

Income Modified for Business Expenses:

6. Enter annual wages paid to dependent household members. _____
7. Enter any undistributed income that the court determines is not reasonably necessary for the growth of the business.

8. Add lines 5, 6, and 7. _____
9. Enter business expenses that the court determines are reasonably necessary for the production of income or operation of the business. _____
10. Subtract line 9 from line 8. This is the parent's **income modified for business expenses**. _____

B. Calculation of Income Imputed Based on Earning Capacity

Instructions: If the parent's income is less than the parent's earning capacity or is unknown, the court may impute income at an amount that represents the parent's ability to earn, based on the parent's education, training and work experience, earnings during previous periods, physical and mental health, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute income of 40 hours per week at the federal minimum hourly wage. If evidence is presented that the parent's ability to earn is limited due to less than a high school education, less than 6 months employment in the past 12 months, and limited availability for work in or near the parent's community, the court may impute the income that a person would earn working 30 hours per week at the federal minimum hourly wage.

$$\frac{\text{(earning capacity)}}{\text{(gross income or income modified for business expenses)}} = \text{(income imputed based on earning capacity)}$$

C. Calculation of Income Imputed from Assets

Instructions: Income may be imputed from assets that are underproductive *and* to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if were living with both parents. Indicate the net value and actual income from each applicable asset, multiply the total net value by the current 6-month treasury bill rate or any other rate that the court determines is reasonable, and subtract actual income from the assets that was included in gross income under Part A.

<u>Property description</u>	<u>Net Value</u>	<u>Income from asse</u>
		(included in gross income in Part A)
1. \$	\$	\$
2.	\$	\$
3.	\$	\$
4.	\$	\$
5.	\$	\$
6.	\$	\$
7.	\$	\$
8.	\$	\$
9.	\$	\$
10. Totals	(a) \$	
(b) \$		

11. Enter the total net value of the assets (line 10a).
\$ _____

12. Multiply line 11 by the current 6-month treasury bill rate or any other reasonable rate. \$ _____

13. Enter income from assets that was included in gross income in Part A (line 10b). \$ _____

14. Subtract line 13 from line 12. This is the parent's **income imputed from assets**.
\$ _____

D. Calculation of the Child Support Obligation Using the Percentage Standard:

1. Enter gross income from Part A, line 5 or, if applicable, income modified for business expenses from Part A, line 10.

2. Enter income imputed based on earning capacity from Part B.

3. Enter income imputed from assets from Part C, line 13. _____
4. Add lines 1, 2, and 3.

5. Divide the amount in line 4 by 12. This is the monthly income available for child support.

6. Enter the appropriate percentage from the following table:

One child	17%
Two children.....	25%
Three children	29%
Four children	31%
Five or more children	34%
7. Multiply line 5 by line 6. **This is the monthly child support obligation.** _____

SECTION II - Computation of the Monthly Child Support Obligation for Serial-Family Payers

1. Enter the monthly income available for child support from Section I, part D, line 5.

2. Determine the order of the payer's legal obligations for child support by listing them according to the date each obligation is incurred. For marital child(ren), the legal obligation for child support is incurred on the child's date of birth. For nonmarital child(ren), the legal obligation for child support is incurred on the date of the court order. For nonmarital child(ren) in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgment of paternity. For a nonmarital maternal child(ren) in an intact family, it is incurred on the child's date of birth.

Date of the first legal obligation	_____
Date of the second legal obligation	_____
Date of the third legal obligation	_____
Date of the fourth legal obligation	_____
3. Determine the monthly child support for the first legal obligation:
 - a) If the payer is subject to an existing support order for that legal obligation, the support is the monthly amount of that order, except a shared-placement order.
Enter that amount here. _____
 - b) If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the monthly income available for child support (line 1) by the percentage for the appropriate number

of children. (table at Section I, part D, line 6).
Enter that amount here.

-
4. Subtract either line 3(a) or 3(b) from the monthly income available for child support in line 1.
This is the first adjusted monthly income available for child support.
-

5. Determine the monthly child support for the second legal obligation:

a) If the payer is subject to an existing support order for that legal obligation, the support is the monthly amount of that order, except a shared-placement order.
Enter that amount here. _____

b) If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the first adjusted monthly income available for child support (line 4) by the percentage for the appropriate family size. (table in Section I, part D, line 6).
Enter that amount here. _____

6. Subtract either line 5(a) or 5(b) from the first adjusted monthly income for child support in line 4.

This is the second adjusted monthly income available for child support. _____

7. Determine the monthly child support for the third legal obligation:

a) If the payer is subject to an existing support order for that legal obligation, the support is the monthly amount of that order, except a shared-placement order.
Enter that amount here. _____

b) If the payer is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the second adjusted monthly income available for child support (line 6) by the percentage for the appropriate family size. (table in Section I, part D, line 6).
Enter that amount here. _____

8. Subtract either line 7(a) or 7(b) from line 6 (second adjusted monthly income available for child support).

This is the third adjusted monthly income available for child support. _____

9. Continue this process for each additional legal obligation for child support that the serial-family payer has incurred. Multiply the appropriate percentage for the number of children subject to the new order by the final adjusted monthly income available for child support to determine the child support obligation. _____

Note: In cases where a court order needs to be determined for marital children and the date of an adjudicated paternity falls between the birth dates of the first and last child in the family with marital children, the legal obligation for child support to this family is determined as follows:

10. Determine the support for the number of children in this family whose birth dates are *before* the date of the paternity adjudication.
(Follow Section II, paragraphs 1 to 3) _____

11. Determine the support for the number of children in this family whose birth dates fall *after* the date of the paternity adjudication by doing the following:

a) Enter the appropriate percentage from the table at Section 1, part D, line 6, for the number of *all* the children in the marital family.

b) Enter the percentage used for the number of children in line 10.

c) Subtract line 11(b) from line 11(a). _____

- d) Use the percentage in line 11(c) to determine the support for the remaining children in the marital family (Follow Section II, paragraphs 4 to 7). Enter that amount here. _____

12. Determine the appropriate support order for the marital family by adding the amounts in lines 10 and 11(d).

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Appendix C
Child Support Obligation of Low-Income Payers

	One Child		Two Children		Three Children		Four Children		Five Children	
Monthly Income Up To	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount
575	11.13%	\$64	16.36%	\$94	18.99%	\$109	20.27%	\$117	22.23%	
600	11.52%	\$69	16.94%	\$102	19.65%	\$118	20.99%	\$126	23.01%	
625	11.91%	\$74	17.51%	\$109	20.32%	\$127	21.70%	\$136	23.80%	
650	12.30%	\$80	18.09%	\$118	20.99%	\$136	22.42%	\$146	24.58%	
675	12.70%	\$86	18.66%	\$126	21.66%	\$146	23.13%	\$156	25.37%	
700	13.09%	\$92	19.24%	\$135	22.32%	\$156	23.85%	\$167	26.15%	
725	13.48%	\$98	19.82%	\$144	22.99%	\$167	24.56%	\$178	26.94%	
750	13.87%	\$104	20.39%	\$153	23.66%	\$177	25.28%	\$190	27.72%	
775	14.26%	\$111	20.97%	\$163	24.32%	\$189	25.99%	\$201	28.51%	
800	14.65%	\$117	21.54%	\$172	24.99%	\$200	26.71%	\$214	29.29%	
825	15.04%	\$124	22.12%	\$182	25.66%	\$212	27.42%	\$226	30.08%	
850	15.43%	\$131	22.70%	\$193	26.33%	\$224	28.14%	\$239	30.86%	
875	15.83%	\$138	23.27%	\$204	26.99%	\$236	28.85%	\$252	31.65%	
900	16.22%	\$146	23.85%	\$215	27.66%	\$249	29.57%	\$266	32.43%	
925	16.61%	\$154	24.42%	\$226	28.33%	\$262	30.28%	\$280	33.21%	
950	17%	\$162	25%	\$238	29%	\$276	31%	\$295	34%	